A **Manokaram a/l Subramaniam v Ranjid Kaur a/p Nata Singh**

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–18 OF 2007(W)
B ZAKI AZMI PCA, ARIFIN ZAKARIA AND HASHIM YUSOFF FCJJ
4 SEPTEMBER 2008

C *Family Law — Divorce — Ancillary relief — Application for — Whether application could be done after decree nisi been made absolute — Interpretation of s 76(1) and (3) of the Law Reform (Marriage and Divorce) Act 1976*

D *Statutory Interpretation — Construction of statutes — Intention of Parliament — Natural and ordinary meaning — Whether court bound to enforce meaning even if result caused was inconvenient, impolite or improbable*

E On 3 August 1999, a decree nisi was granted by the High Court dissolving the marriage between the appellant and the respondent. The claim for ancillary reliefs which was fixed for hearing on 14 September 2000 was struck out by the High Court as the respondent and her counsel were not present in court. The notice of application to make the decree nisi absolute was filed
F by the appellant on 9 October 2000 and the decree nisi became absolute on 5 April 2001. The respondent subsequently filed a notice to proceed with ancillary reliefs which was dismissed by the High Court on the ground that leave was required before such an application could be entertained. The respondent then filed the notice afresh coupled with the application for leave.
G A summons in chambers dated 16 May 2001 was also filed by the respondent to set aside the decree absolute. However, the application was dismissed and the respondent appealed, but was dismissed. On 14 March 2002, the leave application for the respondent to proceed with her claim for ancillary reliefs, which was filed on 11 May 2001, was allowed by the High Court
H notwithstanding the fact that the decree nisi had been made absolute on 5 April 2001. The appellant had been unsuccessful in his appeal against the decision of the High Court and hence this appeal. The appellant contended that leave ought not to have been granted as it went against the provision of s 76 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). It was
I his contention that since the decree nisi had already been made absolute prior to the application herein, the court was not clothed with the necessary jurisdiction to grant the leave applied for. On the other hand, the respondent contended that the word 'subsequently' in r 56(2)(a) of the Divorce and Matrimonial Proceedings Rules 1980 ('the Rules') would mean that the

application could be made at any time with leave of the court and further contended that r 56 of the Rules must be read subject to s 76 of the Act in so far as it related to the division of matrimonial assets.

Held, allowing the appeal with no order as to costs:

(1) (per **Arifin Zakaria FCJ**) The fundamental rule of interpretation is that a statute is to give effect to the intent of the Legislature, and that intention has to be found by an examination of the language used in the statute as a whole. Where the Legislature uses different language in the same connection, in different parts of the statute, it is presumed that a different meaning and effect is intended, and if different language is used in contiguous provisions, it must be presumed to have done so designedly. In the instance where the statute has an ordinary and natural meaning, the court has a duty to enforce that meaning even if the result is inconvenient, impolite or improbable (see para 33).

(2) (per **Zaki Azmi PCA** and **Arifin Zakaria FCJ**) In the present case it was common ground that the application for leave was made after the decree nisi was made absolute by the court. Under s 76(1) and (3) of the Act, the court's jurisdiction to order division of matrimonial asset is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. As the present application was made subsequent to the decree absolute, the court had no jurisdiction to grant such an order (see paras 36 & 40).

(3) (per **Zaki Azmi PCA**) It is important that the parties file in the proper documents, make proper applications, and do so within the time provided by law. The respondent had made a mistake by making no application to reinstate her application for ancillary reliefs upon discovering that it had been struck out by the High Court. The respondent should also have sought leave to file an application for ancillary reliefs since this application was not made in the petition or in the answer thereto (see paras 5–6).

[Bahasa Malaysia summary

Pada 3 Ogos 1999, satu dekri nisi telah diberikan oleh Mahkamah Tinggi membubarkan perkahwinan di antara perayu dan responden. Tuntutan untuk relief sampingan yang ditetapkan untuk pendengaran pada 14 September 2000 dibatalkan oleh Mahkamah Tinggi kerana responden dan peguam caranya tidak hadir di mahkamah. Notis permohonan untuk menjadikan dekri nisi sebagai mutlak telah difailkan oleh perayu pada 9 Oktober 2000 dan dekri nisi tersebut menjadi mutlak pada 5 April 2001. Responden kemudiannya memfailkan notis untuk meneruskan dengan relief sampingan

yang ditolak oleh Mahkamah Tinggi atas alasan bahawa kebenaran diperlukan sebelum permohonan sedemikian boleh dilayan. Responden kemudian memfailkan notis baru bersama-sama dengan permohonan untuk kebenaran. Saman dalam kamar bertarikh 16 Mei 2001 juga difailkan oleh responden untuk mengetepikan dekri mutlak. Walau bagaimanapun, permohonan tersebut ditolak dan responden merayu, tetapi telah ditolak. Pada 14 Mac 2002 permohonan untuk kebenaran untuk responden meneruskan dengan permohonannya untuk relief sampingan, yang telah difailkan pada Mei 2001, telah dibenarkan oleh Mahkamah Tinggi walaupun dengan fakta bahawa dekri nisi telah dijadikan mutlak pada 5 April 2001. Perayu tidak berjaya dalam rayuannya terhadap keputusan Mahkamah Tinggi dan maka rayuan ini. Perayu menghujah bahawa kebenaran tidak wajar diberikan kerana ia adalah bertentangan dengan peruntukan s 76 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta tersebut'). Ia adalah hujahannya bahawa oleh kerana dekri nisi telah pun dijadikan mutlak sebelum permohonan di sini, mahkamah tidak mempunyai bidang kuasa yang perlu untuk memberikan kebenaran yang dipohon. Sebaliknya, responden menghujah bahawa perkataan 'subsequently' di dalam k 56(2)(a) Kaedah-Kaedah Prosiding Perceraian dan Perkahwinan 1980 ('Kaedah tersebut') akan bermakna bahawa permohonan tersebut boleh dibuat pada bila-bila masa dengan kebenaran mahkamah dan selanjutnya menyatakan bahawa k 56 Kaedah mesti dibaca bersama dengan s 76 Akta tersebut setakat yang berkaitan dengan pembahagian aset-aset perkahwinan.

Diputuskan, membenarkan rayuan tanpa perintah terhadap kos:

(1) (oleh **Arifin Zakaria HMP**) Peraturan asas pentafsiran adalah bahawa statut mesti memberi kesan kepada niat badan Perundangan, dan bahawa niat tersebut mesti dicapai melalui pemeriksaan bahasa yang digunakan di dalam statut tersebut secara keseluruhan. Di mana badan Perundangan menggunakan bahasa yang berbeza di dalam keadaan yang sama, di bahagian-bahagian lain statut, ia dianggap bahawa maksud dan kesan yang berbeza diniatkan, dan jika bahasa yang berbeza digunakan di dalam peruntukan yang hampir, ia mesti dianggap sebagai memang dirancang. Dalam keadaan di mana statut mempunyai maksud yang biasa dan lazim, mahkamah mempunyai kewajipan untuk menguatkuasakan maksud tersebut walaupun hasilnya tidak menyenangkan, tidak disukai dan tidak berkemungkinan (lihat perenggan 33).

(2) (oleh **Zaki Azmi PMR** dan **Arifin Zakaria HMP**) Di dalam kes ini ia adalah alasan umum bahawa permohonan untuk kebenaran dibuat selepas dekri nisi dijadikan mutlak oleh mahkamah. Di bawah s 76(1) dan (3) Akta tersebut, bidang kuasa mahkamah untuk memerintahkan

pembahagian harta perkahwinan terhad kepada tempoh pemberian dekri perceraian atau pemisahan kehakiman dan bukan pada masa yang kemudian. Oleh kerana permohonan ini dibuat selepas dekri mutlak, mahkamah tidak mempunyai bidang kuasa untuk memberikan perintah sedemikian (lihat perenggan 36 & 40).

(3) (oleh **Zaki Azmi PMR**) Ia adalah penting bahawa pihak-pihak memfailkan dokumen-dokumen yang sewajarnya, membuat permohonan yang sewajarnya dan berbuat demikian dalam tempoh yang diperuntukkan oleh undang-undang. Responden telah membuat kesilapan dengan tidak memohon untuk memasukkan semula permohonannya untuk relief sampingan selepas mendapati bahawa ia telah dibatalkan oleh Mahkamah Tinggi. Responden sepatutnya memohon kebenaran untuk memfailkan permohonan untuk relief sampingan kerana permohonan ini tidak dibuat di dalam petisyen atau di dalam jawapan terhadapnya (lihat perenggan 5–6).]

Notes

For a case on intention of Parliament, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1882.

For cases on ancillary relief, see 7(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3102–3104.

Cases referred to

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129, HC (refd)

Chai Sau Yin v Kok Seng Fatt [1966] 2 MLJ 54, FC (refd)

Chew Ling Hang v Aw Ngiong Hwa [1997] 3 MLJ 107, CA (refd)

Leow Kooi Wah v Ng Kok Seng Phillip & Anor [1995] 1 MLJ 852, HC (refd)

Soo Lina v Ngu Chu Chiong (Chong Oi Khium Irene, co-respondent) [1992] 2 MLJ 870, HC (refd)

Tan Pau Soon v Lim Beng Choo [1997] 2 SLR 372, CA (refd)

Warburton v Loveland (1832) 2 D & Cl 480, HL (refd)

Legislation referred to

Divorce and Matrimonial Proceedings Rules 1980 r 56, 56(2), 56(2)(a), Form 2

Law Reform (Marriage and Divorce) Act 1976 ss 76, 76(1), 76(3), 77, 77(1)(b), 88(1), 93(1)

Moneylenders Ordinance

Women's Charter [Sing] ss 106, 106(1), 106(3), 112

Appeal from: Civil Appeal No W-02–197 of 2002 (Court of Appeal, Putrajaya)

V Vijaya Segaran (Hemalatha Parasa Ramulu with him) (Maxwell Kenion Cowdy & Jones) for the appellant.

Harpal Singh Grewal (Jasvinjit Singh with him) (AJ Ariffin Yeo & Harpal) for the respondent.

Zaki Azmi PCA:

[1] More often than not, a divorce is acrimonious. Each party will try to extract from the divorce the most to his or her benefit. They will fight over every little issue. Their respective lawyers will advise to take full advantage of every little technicality of the law. One party will claim and the other will strenuously resist. Each must also be aware of their rights and comply strictly with the law. This case is one example where such situation had arisen.

[2] From the facts that have been cited in much detail in the grounds of judgment of my learned brother Arifin Zakaria FCJ, it is clear that the respondent or her counsel had overlooked, not just once, but a number of times during the proceedings to file the correct documents within the permitted time.

[3] Reading from the chronological order of events in the record of appeal I notice that an application for ancillary reliefs was first fixed on 28 October 1999 but because the judge did not have time to hear, it was postponed to a date almost one year later ie 14 September 2000. On this date, the application for ancillary reliefs by the respondent was struck out because neither the respondent nor her counsel was present. According to the respondent, the date was wrongly recorded in her diary. To me, recording the date wrongly in the diary is not an excuse. On 21 September, one week later, the draft decree was sent to the respondent's solicitors for approval. However since the respondent's solicitors did not respond, the draft decree nisi was returned to the court for approval. A copy of the letter addressed to the court was sent to the respondent's solicitors.

[4] On 9 October 2000 the appellant's solicitors filed in an application for an order that the decree nisi be made absolute. On 15 February 2001 four months later a sealed copy of the notice of application for ancillary reliefs together with supporting affidavit was sent to the appellant's solicitors by the respondent. On 27 March 2001 the appellant's solicitors filed in court the decree nisi together with a certificate to make the decree nisi absolute. On 5 April 2001, the certificate making the decree nisi absolute was issued by the court. Even though respondent discovered that her application for

ancillary reliefs had been struck out by the court on 14 September 2000 no application was made to reinstate the application. That is another mistake.

[5] The third mistake that the respondent did was in not seeking leave to file an application for ancillary reliefs since this application for ancillary reliefs was not made in the petition or in the answer thereto. This requirement to obtain leave is quite well established by the Court of Appeal judgment in *Chew Ling Hang v Aw Ngiong Hwa* and the Singapore case of *Tan Pau Soon v Ling Beng Choo*, both cited by my learned brother in his judgment.

[6] If effort had been made by the respondent to check the law, it would be clear from these two cases and the textbook that leave is required. Had application for leave been filed and a stay of the decree nisi from being made absolute sought, immediately thereafter, I am sure the court will not hesitate to grant such application for stay. From these events, it can be clearly seen that the respondent had committed several errors or omissions on her part. The appellant of course is under no duty to point out to the respondent her errors. It is up to the respondent's solicitors or counsel to advise the respondent accordingly.

[7] I feel obliged to make these comments because the courts had been repeatedly accused of being unfair to parties when in fact parties themselves have failed to file in proper documents, make proper applications, and to do so within the time provided by law. It is not as if the lawyer concerned had interpreted the law differently. If there are authorities that support the respondent's actions perhaps the court could be sympathetic with her. The result of all these oversight is injustice to the client.

[8] So all in all, the respondent did not protect her rights well. I do not like to comment who was at fault.

[9] I agree with my learned brother Arifin FCJ that the duty of the court is to interpret and apply the law. In this case the words used in ss 76(1) and 76(3) are clear ie an order for division of matrimonial asset is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. I am very sure that this is the interpretation that is to be given to s 76. Even Singapore had to amend their Women's Charter to enable that ancillary reliefs could be made at any time subsequent to the grant of a judgment of divorce.

[10] In conclusion, I have this to say. I sympathise with the respondent but the law is the law. In *Chai Sau Yin v Kok Seng Fatt* [1966] 2 MLJ 54,

Thompson LP said 'This, however, is a court of law and not a court of morals and it is on that basis that the case must be decided'. That case was in respect of the Moneylenders Ordinance.

[11] In this present case, it is so clear that there is no room to argue that s 76 should be interpreted in the way the respondent had asked us to do.

[12] I therefore agree with my learned brother Arifin Zakaria FCJ that this appeal be allowed. Regarding costs, bearing in mind the circumstances I will not make any order for costs. Deposit to be refunded to the appellant.

Arifin Zakaria FCJ:

BACKGROUND

[13] This is an appeal by the appellant against the decision of the Court of Appeal delivered on 18 October 2006 in dismissing the appeal against the order of the High Court judge granting leave to the respondent to proceed with her application for ancillary reliefs.

[14] The single question of law for the determination of this court reads as follows:

> Can leave of the court be granted to a party in a petition to proceed with a claim for property division under s 76 and/or under any provision of the Law Reform (Marriage and Divorce) Act 1976 after decree nisi has been made absolute.

[15] The learned High Court judge was of the view that under the provisions of the Law Reform (Marriage and Divorce) Act 1976 ('the Act') she was vested with the power and/or jurisdiction to entertain the application by the respondent and went on to make the order in favour of the respondent.

BRIEF FACTS

[16] The appellant and the respondent were married on 24 January 1980. On 3 August 1999, a decree nisi was granted by the High Court at Kuala Lumpur dissolving the marriage. The custody of the child to the marriage was granted to the respondent. The claim for ancillary reliefs which was fixed for hearing on 14 September 2000 was struck out by the High Court as the respondent and her counsel were not present in court. The notice of application to make the decree nisi absolute was filed by the appellant on 9 October 2000 and the decree nisi became absolute on 5 April 2001.

[17] The respondent then filed a notice of intention to proceed with the ancillary reliefs dated 2 February 2001. The said application was dismissed by the High Court on 27 April 2001, on the ground that leave is required before such an application can be entertained. A fresh notice of intention to proceed with the ancillary reliefs dated 11 May 2001 was filed, this time coupled with the application for leave. A summons in chambers dated 16 May 2001 was filed by the respondent to set aside the decree absolute. The said application was dismissed by the High Court. The respondent appealed. The appeal was dismissed by the Court of Appeal on 18 October 2006. On 18 October 2007, the motion for leave to appeal to the Federal Court was also dismissed.

[18] On 14 March 2002, the leave application for the respondent to proceed with her claim for an ancillary reliefs filed on 11 May 2001 was allowed by the High Court notwithstanding the fact that the decree nisi had been made absolute on 5 April 2001. The appellant unsuccessfully appealed against the decision of the High Court to the Court of Appeal and hence this appeal.

THE ISSUES BEFORE THIS COURT

[19] The answer to the question posed to us turns on the proper construction to be accorded to s 76(1) and (3) of the Act. The relevant part of the said section is reproduced below:

> Section 76 Power for court to order division of matrimonial assets
>
> (1) The court shall have power, *when* granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (2) ...
>
> (a) ...
>
> (b) ...
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> (c) ...
>
> (3) The court shall have power, *when* granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (Emphasis added.)

[20] In this context it is also necessary to consider the provision of r 56 of the Divorce and Matrimonial Proceedings Rules 1980 ('the Rules') which reads as follows:

> Rule 56 Application by petitioner or respondent for ancillary relief
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> (1) Any application by a petitioner, or by a respondent who files an answer claiming relief, for —
>
> (a) an order for maintenance pending suit;
>
> (b) a property division order, under section 76 of the Act; or
>
> (c) a maintenance order, under section 77 of the Act,
>
> shall be made in the petition or answer, as the case may be.
>
> (2) Notwithstanding paragraph (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently —
>
> (1) by leave of the court, either by notice in Form 11 or at the trial; or
>
> (2) where the parties are agreed upon the terms of the proposed order, without leave by notice in Form 11.
>
> (3) An application by a petitioner or respondent for ancillary relief, not being an application which is required to be made in the petition or answer shall be made by notice in Form 11.

[21] In this present case it is common ground that the application for leave was made after the decree nisi was made absolute by the court. The application is made pursuant to the provision of r 56(2)(a) of the Rules. The court granted the leave application and this was affirmed by the Court of Appeal. In her grounds of judgment dated 15 July 2001, the learned High Court judge granted the leave application purely for reason that there was some uncertainty as to the date when the decree nisi was in fact made absolute. In the interest of justice she granted leave as she was of the view that the respondent would not in the circumstances of the case be prejudiced even though the decree nisi had already been made absolute.

[22] We do not have the benefit of the judgment of the Court of Appeal. Learned counsel for the appellant contends that leave ought not to have been granted as it goes against the express provision of s 76 of the Act which stipulates that the court shall have power to make the order mentioned in s 76 only when granting a decree of divorce or judicial separation, in the present case, when the decree nisi was made absolute. Since the decree nisi had

already been made absolute prior to the application herein therefore he contends the court is not clothed with the necessary jurisdiction to grant the leave applied for. In support he relied on the decision of the Court of Appeal in *Chew Ling Hang v Aw Ngiong Hwa* [1997] 3 MLJ 107 and the Singapore case of *Tan Pau Soon v Lim Beng Choo* [1997] 2 SLR 372.

[23] The power of the court to order division of matrimonial assets is governed by s 76 of the Act. Subsection (1) of s 76 relates to assets acquired during the marriage by their joint effort, while sub-s (3) relates to assets acquired during the marriage by the sole effort of one party to the marriage. In both instances it is provided that the court shall have power to make such order 'when granting a decree of divorce', that is, on the date when the decree nisi is made absolute.

[24] The procedure for the application of ancillary relief is governed by r 56 of the Rules which provides that an application for ancillary relief shall be made in the petition or answer, as the case may be. Rule 56(2) provides that an application may, however, be made subsequent to the petition or answer by leave of the court, either by notice in Form 11 or at the trial.

[25] It is argued for the respondent that the use of the word 'subsequently' in r 56(2)(a) would mean that the application can be made at any time with leave of the court even after the decree nisi has been made absolute, as in the present case. The appellant on the other hand contends that r 56 must be read subject to s 76 in so far as it relates to the division of matrimonial assets. It must be emphasised that r 56 of the Rules relates to three kind of ancillary reliefs namely:

(a) maintenance pending suit;

(b) a property division under s 76 of the Act; and

(c) maintenance under s 77 of the Act.

[26] It is relevant to note that under s 77(1)(b) of the Act it is expressly stated that the court may order payment of maintenance when granting or subsequent to the grant of a decree of divorce or judicial separation. Therefore, it is clear that the order for maintenance can be made even after the decree nisi has been made absolute. This is not so in the case of division of matrimonial assets. In s 76 it is clearly provided that the power of the court to make an order for the division of matrimonial assets can only be exercised when granting decree of divorce and at no later stage. This seems to be the ratio decidendi in *Chew Ling Hang*, a decision of the Court of Appeal.

A **[27]** In that case the appellant (ex-wife) who was duly served with the petition, did not file an answer to the petition. More than three years after the decree absolute, she applied for ancillary relief claiming a half share in a house and a car purchased by the ex-husband (respondent). The learned High Court judge dismissed the application and she appealed. The appeal was
B dismissed. After considering the English position on a similar issue the Court of Appeal expressed the view that the relevant section of the Act is very differently worded from the English legislation and therefore the authorities relied upon by the appellant are of no assistance. The Court of Appeal held that the Act and the Rules were advisedly so worded that the decree absolute
C should as far as is humanly possible, leave each spouse free to make a new life for himself or herself without being unjustly harassed by fresh claims from a disgruntled ex-spouse which should have been ventilated at the time the decree was being made. This is essentially the 'clean break' principle, which is intended at encouraging the parties to put the past behind them and to
D begin a new life without being overshadowed by the relationship that had broken down.

[28] In construing the relevant r 56 and s 76(1) and (3) of the Act, Mahadev Shankar JCA said as follows:
E

> In this case, we are concerned only with r 56(1)(b). The ex-wife's claim for property division had to be made in her answer. Our interpretation of r 56(2)(a) is that if the claim for ancillary relief is not made in the petition or answer, it can be made subsequently at the trial, in which case no notice in Form 11 is required, or it can
> F be made by leave of the court by notice in Form 11. Since s 76 requires the matter to be dealt with when granting the decree, we think the Form 11 notice must be filed before the decree is made. The words 'or at any time thereafter' which appears in the English Act is plainly missing in our statute. Since this case concerns an application for the division of assets acquired during marriage, it comes within the
> G four walls of s 76(1) and (3) of the Act. By failing to make her application before the decree nisi or at least before it was made absolute, we think that the ex-wife was too late. For the present purposes, therefore, it follows that our interpretation of the word 'subsequently' in r 56(2) means after the answer was or should have been filed but before the grant of the decree absolute.

H

[29] Therefore, the learned judge had adopted a narrow interpretation of the word 'subsequently' in r 56(2) which we think is justified in the face of s 76(1) and (3) of the Act. This decision of the Court of Appeal finds support in the Singapore case of *Tan Pau Soon v Lim Beng Choo*.

I

[30] In that case the wife filed for divorce on 10 September 1987 and the parties came to an agreement on ancillary matters. It was agreed that the wife would not ask for maintenance for herself or a share in the matrimonial flat. Decree absolute was granted on 4 April 1989. On 22 June 1995, she applied

to the court for leave for maintenance for herself and leave to claim a share in the proceeds of the sale of the matrimonial flat. The judge initially refused leave, but upon hearing further arguments, reversed his earlier decision. Amongst his grounds in granting leave he said that the words 'when granting' under s 106 of the Women's Charter (Cap 353) meant that the court could entertain an application within a reasonable time after the grant of the decree. He held that the application of the wife in that case was in circumstances made within a reasonable time. On appeal by the husband the Singapore Court of Appeal reversed the finding of the trial judge. It was held, inter alia, that in proceedings for divorce, where the hearing of the ancillaries had been concluded and the decree nisi had been made absolute, the court had no jurisdiction thereafter to entertain an application under s 106, even where no order under the said section had been made at the hearing of the ancillaries. But where the court had made an interim direction or order on the matrimonial assets and postponed the division to a later date, the court could, after the decree was made absolute, make a final order under that section. The court expressed the view that the words 'when granting' appearing in sub-ss (1) and (3) of s 106 only confer jurisdiction on the court to make such order at the time of the granting of the decree; in the case of a divorce when the decree nisi is made absolute and not thereafter. Section 106 of the Women's Charter had since been replaced by s 112. Under the new s 112 of the Women's Charter the court is presently conferred with the power to order division of matrimonial asset or the sale of such asset 'when granting' or 'subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage'.

[31] Writing of the new s 112, Leong Wai Kum in his book *Principles of Family Law in Singapore*, noted:

> The new s 112 provides that the court may exercise the power 'when granting or subsequent to the grant' of any of the decrees sought in the matrimonial proceedings where the former s 106 referred only to 'when granting' the decree. (emphasis added) … with the substitution of the new s 112, this decision is obsolete'. (Meaning the decision in *Tan Pau Soon*.)

[32] Similarly, I would say, in our case if need be, then s 76 of the Act need to be amended to insert the words 'or subsequent to the grant' or words to the like effect in order to clothe the court with necessary jurisdiction to make such order subsequent to the granting of the decree absolute. Under the current provision of s 76, I do not think the court has the jurisdiction to grant leave as prayed for by the respondent. It is a cardinal principle of law that the court cannot confer jurisdiction upon itself when none exist.

[33] The above view is further fortified upon consideration of other provisions of the Act itself. Take for instance, s 77(1)(b), where it is provided

A that the court may order a man to pay maintenance to his wife or his former wife when granting or subsequent to the grant of decree of divorce or judicial separation. Under s 88(1) it is provided that the court may make order for custody of a child at any time. Similarly, under s 93(1), the court is given the power to order maintenance for children at any time. It is a principle of
B statutory interpretation that when the Legislature uses different language in the same connection, in different parts of the statute, it is presumed that a different meaning and effect is intended, and if different language is used in contiguous provisions, it must be presumed to have done so designedly (see NS Bindrai's *Interpetation of Statutes* (8th Ed) at p 275). The right approach
C to interpretation of statute is as stated by Higgins J in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at pp 161–162 which reads:

> D The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or
> E improbable.

[34] Further, it is amply clear that the court's power under s 76(1) and (3) is indeed intended to be final. As rightly stated by Haidar J (as he then was)
F in *Soo Lina v Ngu Chu Chiong (Chong Oi Khium Irene, co-respondent)* [1992] 2 MLJ 870 at p 877:

> In the circumstances, I am of the opinion that when property adjustment order is made, be it in a judicial separation or divorce proceedings, s 76(1) of the Act is intended to make it final.
> G

[35] This is consistent with the 'clean break' principle, as stated earlier so that the parties can move forward and start a new life without the fear of fresh claim being made by the other party hanging over his or her head.

H

[36] The other issue raised by learned counsel for the respondent is that in this case there was a pending application for division of matrimonial assets when the decree nisi was made absolute. The short answer to that is that, it may be so, but that application which was heard on 27 April 2001, was
I dismissed for want of leave. And it is not in dispute that the present application was filed on 11 May 2001, subsequent to the decree absolute. The respondent further applied to set aside the decree absolute. The application was dismissed by the High Court and the respondent unsuccessfully appealed to the Court of Appeal. The respondent's application for leave to appeal was

dismissed by this court. In the circumstances I do not think that the respondent's contention herein could in any way advance the respondent's case. A

[37] Further, the respondent seeks to rely on what was said by Mahadev Shankar J (as he then was) in *Leow Kooi Wah v Ng Kok Seng Phillip & Anor* [1995] 1 MLJ 852 at p 858: B

> Clearly the words of r 56(2)(a) allows claim to be made at a point in time subsequent to the petition. Although it would have been preferably to deal with this before the decree absolute, I do not think anything turns on this. C

[38] But as admitted by learned counsel for the respondent that case concerns with the application for maintenance and not for division of matrimonial assets. It cannot therefore, be applied to the present case. D

[39] Finally, I must say that this case clearly demonstrates the harsh result arising from the current provisions of s 76(1) and (3) of the Act. But, as I find the words in s 76(1) and (3) are clear and explicit, it is our duty to give effect to it; for in that case the words of the statute speaks the intention of the Legislature (see *Warburton v Loveland* (1832) 2 D & Cl 480 per Tindal CJ at p 489). If the result is unfortunate, it is entirely a matter within the power of the Legislature to take the necessary action to remedy the defects of the law as enacted, and it is not for the courts to usurp the function of the Legislature by straining the meaning of the clear terms of the law seeking to evade the consequences which may ensue. That was precisely what was done by Singapore by enacting the new s 112 of the Women's Charter. E F

[40] Reverting to the issue before us, I am of the view that under s 76(1) and (3) of the Act, the court's jurisdiction to order division of matrimonial asset is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. As the present application was made subsequent to the decree absolute, therefore, I hold that the court has no jurisdiction to grant such an order. G H

THE RESULT

[41] For the above reasons I would answer the question posed to us in the negative and with that, the appeal is allowed but bearing in mind the circumstances of the case I would make no order as to costs. The order of the High Court is set aside. Deposit to be refunded to the appellant. I

A **[42]** My learned brother Hashim Yusoff FCJ have read this judgment in draft and has expressed his agreement with it.

Appeal allowed with no order to costs.

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Reported by Augustine Soosai

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